

IN 1665 Benjamin Perry, the Elder, Contracted with Sir Audly Mervin to sell his Lands in the County of Meath, in Ireland (which were assigned to Perry for his Arrears, as an Officer in Ireland) at six Years Purchase.

By the Act of Settlement made in 1663, the Adventurers and Soldiers were Obligated to Claim the Estates that were allotted to them for their Arrears of Pay, in order to pass Letters Patents thereof, and Benjamin Perry, Sen. being in possession of Eight Hundred thirty nine Acres, One Rood, and Nineteen Perches of Lands in the County of Meath, in Satisfaction of his Pay, did, in April 1665, Contract with Sir Audly Mervin to Sell him those Lands, or so much of them as he should pass Patent of, under Perry's Title for Six year's Purchase, and Sir Audly was besides to pay the year and a half's Value to the 49 Officers, and be at the Charges of claiming and passing Patent, &c.

20. & 25. April
1665.

AN D accordingly by Lease and Release, Dated the 20th and 25th of April 1665, Perry Conveys the Lands to Sir Audly Mervin, and his Heirs, and Sir Audly then Demises all back again (except the Demise Lands of the Naule, which were then computed to be worth 200 l. at that Rate, and which Sir Audly paid down) to Perry for 1000 Years at a Pepper-Corn Rent, as his Security for Sir Audly's paying the Six Years purchase when the Patent should be passed; but notwithstanding Sir Audly soon after paid him 400 l. more, and had thereupon more of the Lands Delivered to him, which he then apprehended did, with the Lands of Naule, Amount to 100 l. a Year.

20. Octob. 1665.

THE Act of Explanation is made, and thereby one third part of the Soldiers Lands is Retrenched, and taken from him, in order to pay Deficient Soldiers and Adventurers.

23. Feb. 1665.

Sir Audly Mervin (as Assignee of Perry) Claims all the Lands, but his Claim was Rejected as to one third part, and afterwards in May 1666, under Perry's Title, he passes Certificate of two parts only, and in March 1668 he passes Patent thereof.

Sir Audly Mervin (as any other might do) a Year after the Retrenched part had been thrown out, placed Deficiencies thereon, to the value according to the Qualifications of the Act, and had a Certificate thereof, and Letters Patents passed to him, and had Possession of it accordingly, and at Perry's desire (to save the Charges of a new Patent) Included in his Patent a parcel of Lands call'd Newtowne.

20. Octob. 1666.

WHICH occasioned a Deed to be made between them dated the 20th of October 1666, whereby Sir Audly declares his Name as to Newtowne, to be in Trust for Perry, and in that Deed is also Recited the Terms of the Sale of the Estate at six years Purchase, and to Defend the 1000 Years Lease against Sir Audly's Lady's Dower, and his other Incumbrances was the sole end of that Deed.

1673.

THAT Sir Audly finding that Perry had not done him right by at least 5 l. a Year, in over-valuing the Lands, which were deliver'd to him when he paid the 400 l. and that Perry had 40 Acres more in the two Thirds than he ought, to the prejudice of the Retrenched third, applied himself to Perry for Redress, which he often Promised, but did not, and so things continued till 1673, when Sir Audly began to disturb some of Perry's Tennants, and then he preferr'd a Bill in Chancery against Sir Audly, setting forth the Agreement, and how that he set forth Lands to the full value of 100 l. a Year, and also that the Retrenched third part ought to be in Trust for him; alledging, that he had not his full Number of Acres set out to him for his Service, and therefore Sir Audly ought to have placed Deficiencies of Perry's thereon.

Sir Audly, in his Answer, says, that Perry never pretended that he was Deficient in his two Thirds, and that he was present in the Court of Clays, (tho' in England when Sir Audly Exhibited his Claim) when the Claim was heard, and Sir Audly admitted to place Deficiencies, and then made no Objections thereto; that they lived within a Stone's throw of each other, and for near six Years time he never made any pretence to the Retrench'd third part, until Sir Audly Disturbed his Tennants.

7. Feb. 1673.

AFTER the Cause had some Transaction in Chancery, on Perry's Petition, the Matters in difference, by Order of Court, were referred to Thomas Taylor and Henry Osborn, Esqs; Officers of the Court of Clays.

8. August 1674.

THE Arbitrators Award Perry to give Sir Audly Lands of 4 l. 4 s. 6 d. a Year, to make up the 100 l. a Year, and that Sir Audly should pay Perry 319 l. 9 s. 8 d. and he to Deliver Sir Audly all the rest of the Lands in Possession.

BUT at Sir Audly's desire (thinking the Arbitrators had done him Wrong in Ordering him but 4 l. 4 s. 6 d. a Year) Matters are referred back to be Reviewed.

BUT before the Arbitrators could make their Award, Sir Audly Mervin dyes, and leaves the Estate to the Respondent Mervin.

AND then the Executors or Trustees of Sir Audly Revive the Suit, and the like Referrees as before.

2d Award, dated

5. May 1677.

THE Referrees make no Alteration from their former Award, save only they mention that Perry had no right to the Retrench'd Lands, which they Omitted in their former Award, occasion'd (as the Respondent Conceives) by the clearness of the Matter.

5. April 1676.

THE Executors or Trustees thinking that Perry, whilst in Possession, was in the Nature of a Mortgagee, preferr'd a Bill in Chancery against Perry for to call him to an Account for the Profits, and likewise for other Matters more large than by the said Award Sir Audly was to have, and also for that the Demise Lands were over-valued.

3. May 1676.

WHERTO Perry Answer'd, and objected against nothing, save only to be Accountable for the Meane Profits, and insisted on the former References and Awards, and that he was willing to accept of the 319 l. 9 s. 8 d. and thereupon to Reconvey the Lands to Sir Audly Mervin's Trustees, without any Reserve or Pretence to the Retrench'd third part.

Perry dyes, and makes his Wife, and the Appellant John, Executors, who Revive the Suit.

29. Jan. 1684.

THE Court Refer it to a Master, to state the value of the Demise Lands, and there were never any further Proceedings thereon.

1683.

THE Respondent Mervin Mortgages amongst (other Lands) the Retrench'd Lands to one Rolls, whose Executrix Mrs. Rolls in 1691, prefers a Bill Chancery against the Respondent to fore-close him, and accordingly had a Decree; but before he was fore-closed, he procured the other Respondent Riley to pay off Mrs. Rolls, and to advance him a farther Sum, amounting in all to 3100 l. and the Estate was accordingly made over to Riley, and two Years time given by him for paying the Money.

1702.

THAT the Respondent Mervin not being able to procure Money at the time Mr. Riley preferr'd his Bill to foreclose him, and in the Bill added the Executors of Perry for to have the rest of the Lands in their possession, upon his paying for the same at the rate of 6 Years purchase.

1703.

AND thereupon the Appellants prefer their Bill against the Respondents, setting forth the whole matter as was in the former Suits, and pray a Decree for the Retrenched Lands, and an account of the Rents and Profits thereof from 1667, (the Possession being then in Sir Audly) whereto the Respondents answer'd, and the Respondent Mervin insisted on the Matters aforesaid.

20. 25. of Nov.

and 4. Decemb.

1704.

AND the Cause came to be heard, at several times, before the Lord Chancellor of Ireland (assisted by the Lord Chief Justice Doyme, and Lord Chief Baron) who Decreed, that the Appellants had no right to the Retrench'd Lands, but as to the Lands for which the 319 l. 9 s. 8 d. was to be paid, the Appellants were not to account for meane Profits, nor were they to be bound by the Account made up by Taylor and Osborn, but was refer'd to a Master.

First.

WHICH Decree as the Respondent (is advis'd) is just, for that the Acts of Settlement and Explanation have always been expounded to Bar all Rights that are not expressly saved in the Certificate and Letters Patents, and Sir Audley placing Deficiencies on the Retrench'd third part made it his own Purchase, without any dependance on, or reference to his Contract with the said Benj. Perry, as any other Person might have done, especially seeing the said Perry was never proved to be Deficient.

Secondly.

FOR that Old Perry was so well satisfied that he had no Right to the Retrench'd third, that he permitted Sir Audley quietly to Enjoy the same under his Patent above 5 Years, without any Demand for the 6 Years purchase for it, or other Pretence whatsoever; till Sir Audley demanding Justice of him occasion'd the Bill in Chancery. And for that he never objected to the Award of Mr. Taylor and Osborne wherein they give it against him; and in his Answer to the Bill of Sir Audley's Executors, he Swears he was in the said Sir Audley's Life-time, and then willing to be concluded by the said Award of Taylor and Osborne, and to Assign all the rest of the Estate in his Possession on the payment of 319 l. 9 s. 8 d.

Thirdly.

AND from 1677 to 1684, tho' there were several Orders and References conceiv'd in the Cause; yet there was not the least notice taken of Retrench'd third third, nor since 1684, any Proceedings till 1703.

And therefore humbly hopes the Appeal shall be dismiss'd with Costs.

J. John Bodrick